APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RAZA UNIDA PARTY, ET AL
v. SA-72-CA-158
BOB BULLOCK, SECRETARY OF STATE OF TEXAS

AMERICAN PARTY OF TEXAS, ET AL
v. MO-72-CA-50
BOB BULLOCK

LAURAL DUNN, ET AL
v. W-72-CA-37
BOB BULLOCK, ET AL

TEXAS NEW PARTY and SOCIALIST WORKERS PARTY, ET AL
v. CA-72-H-990
PRESTON SMITH, GOVERNOR OF TEXAS and BOB BULLOCK

MEMORANDUM OPINION

Before THORNBERRY, Circuit Judge; SUTTLE, District Judge; and WOOD, District Judge

SUTTLE, District Judge

The various plaintiffs, comprised of minor political parties, their candidates for public office, qualified voters wishing to vote for candidates of these political parties, and individuals desiring to run for public office as independent candidates, bring class actions seeking to have this Court declare invalid certain provisions of the Texas Election Code,[1] and related

---

[1] Tex. Rev. Civ. Stat. Ann. art. 1.01 *et seq.* (1967) [hereinafter cited as the Texas Election Code]. The major provision challenged by plaintiffs is Article 13.45(2), which is set out in Appendix "A."

Texas election laws. They also seek to enjoin the Texas Secretary of State from enforcing the challenged enactments. The statutes involved are all statewide in their application, and their constitutionality is questioned on the basis that they violate the First and Fourteenth Amendments to the United States Constitution by infringing on the right of association, free speech, equal protection and due process. The plaintiffs seek declaratory and injunctive relief under 28 U.S.C. § 1343(3) (4); § 2281; and 42 U.S.C. § 1971, § 1981, and § 1983. It is undisputed that the necessary jurisdictional requirements pursuant to 28 U.S.C. § 2281 have been met to require the convening of a three-judge court to determine the issues.[2]

The District Court granted an Order restraining the Secretary of State from refusing to accept any signatures gathered on nominating petitions by the Raza Unida and American Parties between June 30, 1972 and September 1, 1972. The validity of any signatures obtained during this period was conditioned upon the determination on the merits by this three-judge Court. While the individual cases involved herein do not raise identical issues, the general nature of their challenges against the Texas Election laws are similar, and by Order of July 28, 1972, the cases were consolidated for hearing and determination before this three-judge Court.

Texas affords four alternative methods of nominating candidates to the ballot for a general election. First, candidates of parties whose gubernatorial candidate polled more than 200,000 votes in the last general election may be nominated by primary election only.[3] Second, candidates of parties whose candidate polled less than 200,000 votes, but more than 2% of the total vote cast for governor, may be nominated by primary election or by nominating convention.[4] Third, candidates of parties whose candidates polled less than 2% of the total gubernatorial vote in the last general election, and parties who did not have a nominee for governor in the last general election, may be nominated by convention only, or by fulfilling additional requirements set out in article 13.45(2)

---

[2] *See Linda S. v. Richard D.*, 335 F.Supp. 804, 806 (N.D. Tex. 1971).

[3] Texas Election Code, art. 13.02 (1967).

[4] *Id.*, art. 13.45(1) (Supp. 1972).

of the Texas Election Code. Fourth, nonpartisan and independent candidates' names may be printed on the ballot after fulfilling the qualifications set out in article 13.50 of the Texas Election Code.

Plaintiffs Raza Unida Party, the American Party of Texas, the Socialist Workers Party, and the Texas New Party all fall into the third category. Therefore, the thrust of these plaintiffs' attack goes to the constitutionality of article 13.45(2). The other plaintiffs represented by Laural N. Dunn are independent candidates who challenge the constitutionality of article 13.50. Several of the candidates individually challenge the filing requirements of article 13.47a; the age and residency requirements of article 1.05 and Article IV, §§ 4 & 16 of the Texas Constitution; the loyalty oath required by article 6.02; the prohibition in article 13.09(b) against write-in candidates; the "anti-raiding" statute, article 13.11a; and the uniform primary test required by article 13.11. Finally, the American Party of Texas seeks to have this Court declare unconstitutional the McKool-Stroud Primary Financing Law of 1972.[5]

This is another one of those cases where we as Judges are expected to don the "awesome mantle of omnipotence and unerring clairvoyance" to determine if Texas legislation operates to unconstitutionally burden the rights of voters, political parties, and their candidates.[6] While the Supreme Court of the United States has delineated on the extreme end of the spectrum those combinations of restrictions which unconstitutionally impede the election process,[7] and those on the other end which do not,[8] this case presents a new combination which falls squarely in the middle. Because we believe that Courts should exercise restraint in overturning State laws unless clearly unconstitutional, we find that the totality of the Texas Election Code serves a compelling state interest and does not operate to suffocate the election process. Accordingly, we deny all relief requested by plaintiffs.

---

[5] Tex. Laws, 2nd Spec. Sess., ch. 2, § 1, at 7 [text set out in Appendix "B"].

[6] *See Graves v. Barnes*, 343 F.Supp. 704, 750 (W.D. Tex. 1972) (Wood, J., concurring and dissenting).

[7] *Williams v. Rhodes*, 393 U.S. 23 (1968).

[8] *Jenness v. Fortson*, 403 U.S. 431 (1971).

I.

Defendants move to dismiss the complaints in *Raza Unida Party v. Bullock* and *Socialist Workers Party v. Bullock* wherein they challenge art. 13.45(2) of the Texas Election Code. Defendants argue that plaintiffs in the two suits lack standing, and that their cases are moot, because, after their suits were filed, the Texas Secretary of State on August 8, 1972, certified that Raza Unida Party and the Socialist Workers Party had complied with the provisions of art. 13.45(2) and should be placed on the ballot for the November general election. The plaintiffs admit that they could receive no further relief from this Court in this election year. Nevertheless, plaintiffs maintain that they are proper parties who continue to present a justiciable "case or controversy" because excessive funds were spent by them this year in order to comply with the burdensome procedures of the Texas Election Code, and they want assurance that they will not have to repeat the process in the next election year.

The issues presented by the Raza Unida Party and Socialist Workers Party suits with regard to art. 13.45(2) are the same as those presented by the other parties to this suit who have not met the requirements. Thus, the issues are preserved for this Court's determination. Nevertheless, the Court finds that these two parties now lack the requisite "personal stake in the outcome" necessary to preserve jurisdiction in this Court.[9] Accordingly, defendant's Motions to Dismiss Raza Unida Party and the Socialist Workers Party are granted. This dismissal is limited to those issues presented with regard to the party obtaining a place on the ballot pursuant to art. 13.45(2), and in no way precludes individual candidates' challenges to other provisions of the Texas Election Code.

II.

Since *Yick Wo v. Hopkins*,[10] the "political franchise of voting" has been considered a fundamental Constitutional right. The states, of course, are empowered to pass laws regu-

---

[9] *Flast v. Cohen*, 392 U.S. 83, 94-101 (1968); *Data Processing Serv. v. Camp*, 397 U.S. 150 (1969); *cf. Laird v. Tatum*, ...U.S....., 40 U.S.L.W. 4850, 4853-54 n.7 (June 26, 1972).

[10] 118 U.S. 356 (1886).

lating the selection of electors by Art. II, § 1 of the United States Constitution. However, any notion that Art. II, § 1 gives the states power to impose burdens on the right to vote, where such burdens are expressly prohibited in other Constitutional provisions, has been rejected by the United States Supreme Court in *Williams v. Rhodes*.[11] In striking down as too burdensome Ohio election laws regulating the placement of minority parties on the ballot, the Court in *Rhodes* discussed the Constitutional provisions protecting voting rights:

> In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the state claims to be protecting, and the interests of those who are disadvantaged by the classification. In the present situation the state laws place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States. Similarly we have said [the same] with reference to the right to vote....[12]

Although the respondent in this case urges that the traditional "rational basis" test[13] ought to be applied in determining whether the Texas election laws violate equal protection, the Supreme Court consistently has applied the "com-

---

[11] 393 U.S. 23, 29 (1968).

[12] *Id.* at 30-31 (footnotes omitted).

[13] Under this traditional standard the Court must determine "whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective." *Turner v. Fouche*, 396 U.S. 346, 362 (1970).

pelling state interest" test[14] in voting rights cases to determine whether the state's Constitutional power to regulate justifies limiting first amendment freedoms.[15] Primaries as well as general elections have been subjected to this exacting scrutiny.[16]

In *Bullock v. Carter, supra*, the Court for the first time applied the compelling state interest test to restrictions on candidacy.[17] The Court stated that to determine which standard to use when reviewing state regulations barring candidate access to the primary ballot, it is essential to examine the extent and nature of the regulations' impact on the voters. The Court concluded that because the Texas Filing Fee Law had an appreciable impact on voters' exercise of the franchise and because this impact was related to the resources of the voters supporting a particular candidate, the state must justify its restrictions under the stricter standard. By this standard

---

[14] Under the [compelling interest] standard a state must show both that it has a compelling interest which justifies its laws and that the distinctions drawn by the law are necessary to further its purpose. *The Supreme Court, 1968 Term*, 83 *Harv. L. Rev.* 60, 93 n.30 (1969).

[15] *Bullock v. Carter*, 405 U.S. 134 (1972); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Oregon v. Mitchell*, 400 U.S. 112, 241 (1970) (Brennan, White & Marshall, JJ., concurring and dissenting); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970); *Evans v. Cornman*, 398 U.S. 419 (1970); *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *Kramer v. Union Free School Dist.*, 395 U.S. 621 (1969); *Williams vs. Rhodes, supra. Cf. Harper v. Virginia Bd. of Election*, 383 U.S. 663 (1966). *Accord Yale v. Curvin*, No. 4833, 41 U.S.L.W. 2056 (D. R.I., July 18, 1972); *Manson v. Edwards*, No. 38325, 41 U.S.L.W. 2055-56 (S.D. Mich., July 17, 1972); *Peoples Party v. Tucker*, No. 72-102, 41 U.S.L.W. 2005 (M.D. Pa., June 7, 1972); *Ferguson v. Williams*, 343 F.Supp. 654, 656 (N.D. Miss. 1972); *Nagler v. Stiles*, 343 F.Supp. 415 (D. N.J., May 26, 1972); *Pontikes v. Kusper*, No. 71-C-2363, 40 U.S.L.W. 2648 (N.D. Ill., March 9, 1972); *Socialist Workers Party v. Welch*, 334 F.Supp. 179 (S.D. Tex. 1971); *Socialist Workers Party v. Rockefeller*, 314 F.Supp. 984, 989 (S.D.N.Y.), *aff'd*, 400 U.S. 806 (1970).

[16] *E.g. Bullock v. Carter, supra; Smith v. Allwright*, 321 U.S. 469 (1944); *United States v. Classic*, 313 U.S. 299 (1941); *Manson v. Edwards, supra. Contra Wood v. Putterman*, 316 F.Supp. 646 (D. Md.), *aff'd*, 400 U.S. 859 (1970).

[17] Respondent's distinguishing argument that the Supreme Court has applied the compelling state interest test only in those cases where an individual's right to vote was absolutely prohibited is in error. The Court in *Rhodes* applied the test under exactly the same circumstances as exist in this case. Likewise Respondent is wrong where he states that *Bullock v. Carter* utilized the rational basis test. In *Bullock*, the Supreme Court for the first time attached fundamental status to candidacy so as to invoke a rigorous standard of review. In fact, *Bullock* was relied upon and cited in *Dunn v. Blumstein* as authority for the compelling state interest test.

the Court must now analyze the impact which the totality[18] of the Texas Election Code has upon the voters.

III.

In order to have the names of its nominees printed on the general election ballot, a new or minority party must meet the following requirements of article 13.45(2):

1. A list of participants in each precinct convention must be signed and certified by the temporary chairman listing the names, addresses (including street or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions. The names on this list must total at least 1% of the total votes cast for governor at the last preceding general election. This year, the total needed was approximately 22,000 signatures.

2. If the number of qualified voters attending the precinct conventions is less than the required 1%, there must be filed, along with the precinct lists, a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least 1% of the total votes cast for governor in the last preceding general election. The address and registration certificate number of each signer must be shown on the petition.

3. No person who, during the voting year, voted at any primary election or participated in any convention of any other party may attend the minority party convention or sign the petition or the signature will be void and that person subject to criminal penalties.

4. The petition may not be circulated for signatures until after the date set for the holding of the major parties' primaries.[19] Signatures must be certified to the Secretary of

---

[18] In *Williams v. Rhodes, supra*, the majority (393 U.S. at 34), concurring (393 U.S. at 39) (Douglas, J.), and dissenting (393 at 62) (White, J.) opinions each pointed to the "totality" of the law to find it unconstitutional. *Accord Socialist Labor Party v. Rhodes*, 318 F.Supp. 1262, 1268 (S.D. Ohio 1970), *appeal dism'd*, 405 U.S. 949 (1972); *Socialist Workers Party v. Rockefeller*, 314 F.Supp. 984, 989 (S.D.N.Y.), *aff'd*, 400 U.S. 806 (1970).

[19] Primaries must be held on the first Saturday in May. Texas Election Code, art. 13.47 (Supp. 1972).

State's office before 20 days after the date for holding the party's state convention.[20] This year minority parties had from May 6th until June 30th, or approximately 53 days, to gather signatures.

5. Each person who signs a petition must be administered an oath[21] before a notary public at the time he signs.

Plaintiffs contend that these requirements, singly and in totality, impede the election process, the right of association guaranteed by the First Amendment, and are violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The State of Texas argues that it has a compelling interest in requiring some minimum amount of public support before placing a candidate's name on the ballot and in assuring that all candidates are in fact seeking elective office in good faith. The Court agrees that these are valid state objectives.[22] A review of the decisions since *Williams v. Rhodes, supra*, leads this Court to conclude that the totality of the scheme required by article 13.45(2) is not constitutionally impermissible. The Supreme Court in *Jenness v. Fortson, supra*, balanced Georgia's "relatively high" 5% petition requirement against the absence of oppressive party organization requirements, voter cross-over prohibitions, or a restrictive petition circulating time period. Likewise, Texas' lenient 1% petition requirement must be balanced against its more burdensome party organization, circulation, and anti-raiding requirements.

Certainly the minimal 1% required by Texas to show voter support as a condition for ballot position serves a legitimate state objective. Percentage requirements of 15%, 7%, and 2% have been struck down by some Courts.[23] But other Courts

---

[20] State conventions must be held on the second Saturday in June. *Id.*

[21] To each person who signs the petition there shall be administered the following oath, which shall be reduced to writing and attached to the petition: "I know the contents of the foregoing petition, requesting the names of the nominees of the .....Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party." Art. 13.45(2).

[22] *Bullock v. Carter*, 405 U.S. at 145; *Jenness v. Fortson*, 403 U.S. at 442; *Williams v. Rhodes*, 393 U.S. at 32.

[23] *Williams v. Rhodes, supra* (15%); *Peoples Party v. Tucker*, No.

have upheld percentage requirements ranging from 1% to 5%.[24] Even in *Williams v. Rhodes*,[25] the Court noted the lenient 1% requirements of a vast majority of the states. Although any percentage requirement is necessarily going to be arbitrary, 1% is a fair minimum to serve the state's compelling interest in this regard.

The Court in *Jenness*, 403 U.S. at 441, pointed out that "a large reason" for the invalidation of the Ohio election scheme in *Williams* was Ohio's requirement that small parties establish "elaborate statewide, county-by-county, organization paraphernalia." The Texas requirement of precinct, county, and state conventions is obviously more burdensome than the Georgia scheme upheld in *Jenness*, but is clearly more hospitable to new or small parties than was the "entangling web of election laws" invalidated in *Williams*. Following the *Jenness* command to look to the "totality" of a state's requirements, and balancing Texas's burdensome organization requirements against its lenient 1% petition requirement, we hold that the organization requirements are constitutionally permissible.

Plaintiffs challenge the provisions of article 13.45(2) which prevent the circulation of minority party nominating petitions until the day following the majority parties' primary elections, and then prohibit anyone who has voted in a primary from signing a minority party petition. The State argues that the requirement that a new party hold a precinct convention on primary day affords that party an equal opportunity with all other parties to attract the voter to its political process. Thus, if the party has at least 1% support, and the people attend the convention, there is no need for the petition requirement at all. Additionally, if the petitions are circulated well in ad-

---

72-102 (M.D. Pa., June 7, 1972) (2%); *Socialist Workers Party v. Rhodes*, 318 F.Supp. 1262 (S.D. Ohio (1970), *appeal dism'd*, 405 U.S. 949 (1972) (7%).

[24] *Jenness v. Fortson*, *supra* (5%); *Jones v. Hare*, 440 F.2d 685 (6th Cir.), *cert. denied*, 404 U.S. 911 (1971) (1%); *Jackson v. Ogilvie*, 325 F.Supp. 864 (N.D. Ill.), *aff'd*, 403 U.S. 431 (1971) (5%); *Moore v. Board of Elections*, 319 F.Supp. 437 (D.D.C. 1970) (2%); *Wood v. Putterman*, 316 F.Supp. 646 (D. Md.), *aff'd*, 400 U.S. 859 (1970) (3%); *Peoples Constitutional Party v. Evans*, 83 N.M. 303, 491 P.2d 520 (1971) (3%).

[25] 393 U.S. at 33 n.9.

vance of the precinct conventions and primary elections, a voter may sign before another party's position has crystallized and the voter would be precluded from changing his mind. Third, the State argues that by delaying the petition circulating process until after the primary election, there is less chance that individual voters will become confused or engage in the party process of more than one party.

We agree with the State's contentions. The Courts recognize a state's compelling interest to preserve the integrity of its election process.[26] Under the Texas scheme a voter may exercise the franchise by voting in the primaries or by attending a minority party convention. "He cannot have it both ways. Such a requirement seems not only fair but mandatory under the holding in *Baker v. Carr*, [369 U.S. 186 (1962)]."[27] Several Courts have found that a state has an interest in preventing "raiding," whereby members of one party vote in the primary of another party for the sole purpose of bringing about the nomination of the weakest candidate. So long as these "anti-raiding" provisions are narrowly drawn, as is the challenged Texas provision, the right of disaffected voters to associate in a new political party is not unduly burdened.[28]

Likewise, the provision of article 13.45(2) which requires the administering of a prescribed oath before a notary to those signing the petitions serves a compelling interest to insure

---

[26] *E.g. Rosario v. Rockefeller*, 458 F.2d 649, 652 (2nd Cir. 1972), *cert. granted*, 40 U.S.L.W. 3572 (May 30, 1972); *Briscoe v. Kusper*, 435 F.2d 1046, 1054 (7th Cir. 1970); *Lester v. Board of Elections*, 319 F.Supp. 505, 509 (D.D.C. 1970); *Socialist Workers Party v. Rockefeller*, *supra*, 314 F.Supp. at 998.

[27] *Jackson v. Ogilvie*, 325 F.Supp. at 867.

[28] *Compare* Texas Election Code, art. 13.45(2) [voter cannot participate in majority party primary and minority party election process in the same election year] *with Rosario v. Rockefeller*, *supra* [held constitutional a statute requiring voter to be enrolled as a party member prior to the previous general election before he can vote in the primary]; *Lippitt v. Cipollon*, 404 U.S. 1032 (1972), *aff'g*, 337 F.Supp. 1405 (N.D. Ohio 1971) [held constitutional a statute prohibiting candidacy in party primary if person voted as a member of a different political party in the past preceding four years]; *Yale v. Curvin*, No. 4883, 41 U.S.L.W. 2056 (D.R.I., July 18, 1972) [held unconstitutional statute prohibiting vote in primary of any political party if voted in primary of another political party in preceding 26 months]; *Pontikes v. Kusper*, No. 71-C-2363, 40 U.S.L.W. 2648 (N.D. Ill., March 9, 1972) [held unconstitutional statute prohibiting vote in primary if voted in primary of another party within preceding 23 months]; *Nagler v. Stiles*, 343 F.Supp. 415 (D.N.J. 1972) [held unconstitutional statute requiring that two successive primaries must elapse before voter may switch parties].

that participants in one party's nominating process do not participate in another's. When questioned by the Court in oral argument, counsel for Raza Unida Party admitted that the oath and notary requirements did not hinder their efforts to secure signatures. There is apparently no workable alternative to the requirement that each person who signs a petition be administered an oath if the state is to be able to enforce its criminal penalties against cross-over voting and apprize the voters of these possible penalties. Given the state's interest in insuring that different candidates for the same office are supported by different voters, we uphold the oath requirement for want of a feasible alternative.

The State advances two arguments in support of its requirement that a new party circulate and obtain within a 55-day period (120 days before the general election) the required signatures to be filed with the Secretary of State. First, a failure to obtain the required 1% at precinct conventions, and in the 55 days thereafter by petition, indicates that the political party involved lacks political support or initiative. The Court agrees that the requirements must not be unduly burdensome due to the fact that two minor political parties obtained a place on the ballot by fully complying with every provision of the Texas Election Code. Second, the State argues that a cut-off period of 120 days is necessary in order for the Secretary of State to check the validity of the signatures on the petitions as best he can in sufficient time to allow, not only the printing of the ballot, but any legal contests which might arise.[29]

Of course, "administrative convenience . . . alone may not be invoked to impinge upon the exercise of important Constitutional rights."[30] While the State has shown a valid interest which must be recognized, the plaintiffs have made no showing that these requirements have actually denied to them rights secured by the United States Constitution.[31] We can

---

[29] In this connection, article 1.03(2) of the Texas Election Code requires the Secretary of State to certify the candidates nominated for office to the county clerks at least 30 days prior to the general election. The State argues that it actually needs longer than 30 days in order to let the bids on the printing of ballots, etc.

[30] *Ferguson v. Williams*, 343 F.Supp. 654, 656 (N.D. Miss. 1972).

[31] *Compare Jackson v. Ogilvie*, 325 F.Supp. at 869 [64 days]; *Moore v. Board of Elections*, 319 F.Supp. 437, 438 (D.D.C. 1970) [54 days].

find nothing in this system which abridges the rights of free speech and association secured by the First and Fourteenth Amendments.

Nor does the Court find a violation of Equal Protection. The states have broad discretion in formulating election policies. *Williams v. Rhodes*, 393 U.S. at 34. The Supreme Court in *Jenness v. Fortson*, 403 U.S. at 441 recognized that holding primary elections involved burdens equal to those encountered in circulating nominating petitions. But, as demonstrated by the successful attempt of the Raza Unida and Socialist Workers Parties, the provisions of article 13.45(2) do not operate to "freeze the political status quo." *Jenness v. Fortson, supra.* As the Court aptly stated in *Tansley v. Grasso:*

> It may well be that the plaintiffs have strong feelings that this legislative distinction creates an unnecessary burden upon prospective candidates for public office, however, if their claim has any merit their proper forum is before the state legislature. The plaintiffs have shown no invidious discrimination.[32]

Accordingly, plaintiffs' challenges to the Constitutionality of article 13.45(2) are found to be without merit and are denied.[33]

IV.

Plaintiffs, American Party of Texas and Texas New Party, challenge the constitutionality of article 13.47a, which requires that a person comply with the provisions of article 13.12 in filing his intention to become a candidate. Article 13.12 provides that the application may not be filed later than

---

[32] 315 F.Supp. 513, 519 (D. Conn. 1970).

[33] The Texas New Party also challenges the provisions of article 13.45(2), which require the signers of nominating petitions to be currently registered voters. The contention was mentioned only once in the New Party Complaint (Pt. 6c), and was not briefed by either side. Clearly the requirement that all voters be currently registered voters is not Constitutionally infirm. If plaintiffs are attempting to challenge the durational residency requirements of the statute, they have done so improperly. No allegations were offered that any of the plaintiffs were denied the right to vote because of the registration requirements. In fact, plaintiffs stipulated that Elizabeth Cox and James Damon, voters joining in the New Party suit, are both *qualified* voters. Thus, this issue is not properly before the Court and need not be decided.

6 p.m. on the first Monday in February (or February 7, 1972 this year), three months preceding the primary or convention. Because the American Party does not allege that any of its candidates were denied the ballot because of failure to comply with this provision, it lacks standing to contest this issue. However, plaintiff David Hale, who filed as a New Party candidate for the office of Sheriff of Nacogdoches County, Texas after February 7, 1972, preserves this issue for our determination.

The State requires all persons, including those who seek election in party primaries, to file on the same date. Therefore, plaintiff's contentions that the provision is violative of equal protection and due process are without merit. Similar contentions were recently rejected in *Socialist Workers Party v. Rhodes:*

> The state has an interest in having persons who otherwise qualify for ballot position officially become candidates at a designated time prior to an election. In addition, the state may reasonably require that all persons seeking elective office become officially declared candidates on or before a certain date preceding an election. One may not play dog in a political manger by withholding his determination of candidacy until after party candidates are chosen by the primary process.[24]

Accordingly, plaintiff Hale's prayer to enjoin the defendant from refusing to place his name on the ballot due to his failure to comply with articles 13.47a and 13.12 is denied.

V.

Plaintiff Debby Leonard, Socialist Workers Party candidate for Governor of Texas, and plaintiff Meyer Alewitz, Socialist Workers Party candidate for Lt. Governor of Texas, challenge the constitutionality of the age and residency requirements for those offices imposed by Article IV, §§ 4 & 16 of the Texas Constitution. Because neither of these plaintiffs have alleged that they were denied access to the ballot for

---

[24] 318 F.Supp. 1262, 1273 (S.D. Ohio 1970), *appeal dism'd as moot sub nom. Gilligan v. Sweetenham*, 405 U.S. 949 (1972).

failure to meet the residency requirement, they have no standing to challenge this provision, and we cannot entertain the issue. They do, however, present a justiciable question regarding the age requirement.

Article IV, §§ 4 & 16 of the Texas Constitution provides that the Governor and Lt. Governor of the State of Texas "shall be at least 30 years of age . . . ." Plaintiff Meyer Alewitz is presently 21 years of age. Plaintiff Debby Leonard was 29 years old when she filed, but will be 30 an September 11, 1972 before the general election. Otherwise, each are qualified to hold these elective offices. The parties have not informed the Court whether the Secretary of State interprets the provision as requiring a candidate for these offices to be 30 years of age at the time of filing; the statute is also silent on the matter. For purposes of this discussion, the Court will assume that plaintiff Leonard is not presently qualified as a candidate for Governor.

Plaintiffs claim that it is constitutionally impermissible to deny a citizen who is over 18 years of age elective office simply because he has not reached the age of 30 years. Plaintiffs contend that such invidious discrimination against otherwise qualified citizens cannot be justified by any compelling state interest and thus denies those persons between the ages of 18 and 30 the equal protection of the laws, as well as First Amendment freedoms of association, petition, and speech.

The only case in point which we have been able to find supports plaintiffs' position. In *Manson v. Edwards*,[35] a Michigan city charter provision requiring all candidates for the Detroit City Council to be at least 25 years of age was tested by the compelling interest standard and held violative of Equal Protection. The Court reasoned that the rejection of candidates less than 25 years old also denied some citizens the opportunity to vote for the candidate of their choice in violation of First Amendment freedoms. The City made no showing that the knowledge or wisdom arguably necessary to fulfill the duties of the Councilman are absent in all or most persons between the ages of 18 and 24.

We respectfully decline to follow the *Manson* decision. We

---

[35] No. 38325, 41 U.S.L.W. 2055-56 (E.D. Mich., July 17, 1972).

find that the state has an interest, whether compelling or otherwise[36] in having a minimum maturity in voters and in having an informed electorate. The Supreme Court recognized prior to the adoption of the 26th Amendment to the United States Constitution that a state could constitutionally establish a minimum age for its voters.[37] There is no question that Congress could do so in national elections as well.[38] As the Court recently observed in *Bullock v. Carter, supra*, "the rights of voters and the rights of candidates do not lend themselves to neat separation . . . ."[39] Therefore this Court will not extend the Equal Protection Clause to nullify the states' powers over election requirements for candidates where they once had the Constitutional power to prescribe such regulations for voters. The Framers of the United States Constitution saw the wisdom in establishing minimum age requirements for President, Vice-President, and Members of Congress.[40] Until the Supreme Court holds otherwise, this Court has reached the "formidable 'Stop' sign" referred to by Mr. Justice Harlan in *Oregon v. Mitchell*, 400 U.S. at 152, through which we will not run. Accordingly, the injunctive relief sought by plaintiffs Leonard and Alewitz to enjoin defendant from refusing to place their names on the general election ballot for failure to comply with the age requirement of Article IV, §§ 4 & 16 of the Texas Constitution is denied.

VI.

Several of the plaintiffs allege that the Texas Election Code is invidiously discriminatory because it does not provide absentee balloting for minority and independent candidates

---

[36] See the discussion on the propriety of using the compelling interest standard in reviewing a state's right to establish minimum age requirements in *Oregon v. Mitchell*, 400 U.S. 112, 294 (1970) (Stewart, J., concurring and dissenting); *Gaunt v. Brown*, 341 F.Supp. 1187, 1190-92 (S.D. Ohio 1972).

[37] *See, e.g., Oregon v. Mitchell, supra; Kramer v. Union Free School District*, 395 U.S. 621, 625 (1969); *Lassiter v. Northampton Election Bd.*, 360 U.S. 45, 51 (1959); *cf. Carrington v. Rash*, 380 U.S. 89 (1964); *Pope v. Williams*, 193 U.S. 621 (1904).

[38] *Oregon v. Mitchell, supra.*

[39] 405 U.S. at 143.

[40] U.S. Const. art. I, § 2 [Representatives], § 3 [Senators]; Art. II § 1 [President]; Amend. 12 [Vice-President].

while it does allow absentee ballots to be cast for candidates of majority parties. We find plaintiffs' contentions to be without merit.

The Supreme Court in *McDonald v. Board of Elections*[41] held that the traditional rational basis standard rather than the more exacting compelling interest test should be used in evaluating classifications involving absentee ballot provisions. Although the State of Texas does not offer any reasons for the lack of a provision allowing voters to cast absentee ballots for minority party candidates and independents, "Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them."[42]

Conceivably, Texas has a rational basis in refusing to expend the time, money, and effort required to print and distribute absentee ballots at state expense for minority parties.[43] The different treatment accorded minority and majority parties in Texas is not arbitrary and invidious discrimination totally unrelated to the object of the legislation.[44] In *McDonald* the Court treated absentee ballot legislation as remedial legislation designed to extend the franchise to those who had previously been unable to exercise it. But the Court stated that such legislation should not be invalidated merely because the legislature failed to cover all classes of persons who might benefit from it.[45]

VII.

Plaintiff Laural N. Dunn, independent candidate for the United States House of Representatives, represents himself and several other independent candidates in their challenges of article 13.50 of the Texas Election Code, which sets out

---

[41] 394 U.S. 802, 807 (1969).

[42] *Id.* at 809.

[43] *See Fidell v. Board of Elections*, 343 F.Supp. 913, 915 (E.D. N.Y. 1972).

[44] *See Morey v. Doud*, 354 U.S. 457, 465 (1957); *Smith v. Cahoon*, 283 U.S. 553, 567 (1931).

[45] *McDonald v. Board of Elections*, 394 U.S. at 809, 811.

the requirements independent candidates must meet in order to get on the general election ballot.[46] The other plaintiffs represented by Dunn are two independent candidates for the Texas House of Representatives, one independent candidate for the Texas Senate, and one independent candidate for county commissioner of McClennan County, Texas.

Other than a general allegation that the requirements of article 13.50 are "unduly burdensome" as to them, plaintiffs present absolutely no factual basis in support of their claims. We reject outright plaintiffs argument that states can impose no additional election requirements other than those found in the United States Constitution.[47] Plaintiffs admitted in oral argument that they did not attempt in any way to comply with the provisions of article 13.50. Since *inability*, rather than *unwillingness*, to comply is crucial here,[48] there is some basis for holding that these plaintiffs lack standing to challenge the requirements of the Texas Election Code. Nevertheless, we conclude for the same reason stated in Part III of this opinion that the requirements of article 13.50 serve a compelling state interest and do not operate to suffocate the election process. Nor are they violative of Equal Protection. The totality of the scheme imposed upon independent candidates is even less burdensome than that required of political parties. For these reasons we hold article 13.50 constitutional and deny relief to plaintiffs.

VIII.

The American Party of Texas challenges the constitutionality of the McKool-Stroud Primary Financing Law of 1972.[49]

---

[46] Article 13.50 (which is set out in Appendix "C") constitutes the major focal point of attack by these plaintiffs. However, they also challenge article 13.09(b), prohibiting write-in balloting in Texas; article 13.11a, prohibiting any person who has participated in a party primary or convention from being placed on the ballot as an independent candidate; and article 13.11, requiring a uniform primary test.

Because the plaintiffs have failed to allege or show that they were denied access to the ballot through the opertaion of any of these statutes, the issues presented are not properly before this Court and are not decided.

[47] *See Bullock v. Carter*, 405 U.S. at 145; *Jenness v. Fortson*, 403 U.S. at 442; *Williams v. Rhodes*, 393 U.S. at 32.

[48] *Bullock v. Carter*, 405 U.S. at 146.

[49] Tex. Laws, 2nd Spec. Sess., ch. 2, § 1, at 7 [set out in Appendix "B"].

The pleadings allege, not only violations of the Due Process and Equal Protection Clauses of the United States Constitution, but a myriad of State Constitutional violations as well. We decline pendent jurisdiction of the State Constitutional issues.[50] Furthermore, we find plaintiffs' allegations bottomed upon the Constitution of the United States to be without merit.

The McKool-Stroud Act was passed to provide financing for party primaries after the Supreme Court held the Texas filing fee requirements unconstitutional in *Bullock v. Carter*.[51] The Act provides that the State of Texas will finance the primary elections of only those political parties casting 200,000 or more votes for governor in the last preceding general election. Thus on its face, the Act excludes any payment of state funds to minority political parties.

The state supports the validity of the Act by arguing that only those major parties required to hold primary elections by article 13.02 of the Texas Election Code incur the large expense entailed in conducting a party primary election. The convention and petition procedure available for small or new parties carries with it none of the expensive election requirements burdening those parties required to conduct primaries. There exists no need for expenditures of state funds for political groups which may have little if any voter support. If, however, minority parties reach a size where they are forced to conduct party primary elections, they will, in turn, be the recipients of the State's financial assistance. Such an arrangement is constitutionally permissible.[52]

---

[50] *See United States Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) ["It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right."] Although the American Party claims to have applied for mandamus against enforcement of the McKool-Stroud law in the Texas Supreme Court on May 3, 1972 which was summarily refused thus "exhausting" state remedies, this Court should not and does not have to concern itself with the interpretation of the Texas Constitution — a task through comity better left to state courts.

[51] 405 U.S. 134 (1972), *aff'g, Carter v. Dies*, 321 F.Supp. 1358 (N.D. Tex. 1970).

[52] [A]ny political body that wins as much as 20% support at an election becomes a "political party" with its attendant ballot position rights *and primary election obligations*, and any "political party" whose support at the polls falls below that figure reverts to the status of a "political body" with its attendant nominating petition responsibilities and *freedom from primary election duties*. We can find in this system nothing

Finally, the State of Texas specifically raised the possibility of just the type of attack here presented before the Supreme Court in *Bullock v. Carter*. In answering the State's contention, the Court stated:

> [T]he Court has recently upheld the validity of a state law distinguishing between political parties on the basis of success in prior elections. *Jenness v. Fortson, supra*. We are not persuaded that Texas would be faced with an impossible task in distinguishing between poltical parties for the purpoes of financing primaries.[53]

The only conclusion that can be drawn from the Court's statement is that they anticipated that only those political parties required to engage in the expensive primary elections would receive State financial aid. This Court will not invalidate the Texas Legislature's reasonable attempt to comply with that directive.

In sum, this Court finds that the Texas Election Code is not comprised of "an entangling web of election laws" of the type referred to by Mr. Justice Douglas and invalidated in

---

that abridges the rights of free speech and association secured by the First and Fourteenth Amendments.

. . . .

The fact is, of course, that from the point of view of one who aspires to elective public office in Georgia, alternative routes are available to getting his name printed on the ballot. He may enter the primary of a political party, or he may circulate nominating petitions either as an independent candidate or under the sponsorship of a political organization. We cannot see how Georgia has violated the Equal Protection Clause of the Fourteenth Amendment by making available these two alternative paths, neither of which can be assumed to be inherently more burdensome than the other.

. . . [W]e can hardly suppose that a small or a new political organization could seriously urge that its interests would be advanced if it were forced by the State to establish all of the elaborate statewide, county-by-county, organizational paraphernalia required of a "political party" as a condition for conducting a primary election.

. . . [T]here are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other. Georgia has not been guilty of invidious discrimination in recognizing these differences and providing different routes to the printed ballot. Sometimes the greatest discrimination can lie in treating things that are different as though they were exactly alike, a truism well illustrated in *Williams v. Rhodes, supra*.

403 U.S. at 439-42 (emphasis supplied) (footnotes ommitted).

[53] 405 U.S. at 147.

Williams v. Rhodes, 393 U.S. at 35. Obviously, it does not operate to "freeze the status quo" since two minority parties have qualified and been certified to the ballot in Texas. *Compare Jenness v. Fortson*, 403 at 431. After close scrutiny, this Court cannot say that, in serving its compelling interests, Texas has chosen the way of greater interference in establishing alternative routes to the ballot. *Dunn v. Blumstein*, 405 U.S. at 343.

It is, therefore, ORDERED, ADJUDGED and DECREED:

1. That articles 1.05, 13.11a, 13.45(2), 13.47a, and 13.50 of the Texas Election Code; the minimum age requirement of Article IV, §§ 4 & 16 of the Texas Constitution; and the McKool-Stroud Primary Financing Law of 1972 are not violative of the First and Fourteenth Amendments to the United States Constitution. Therefore all relief requested by plaintiffs is denied and the complaints are dismissed.

2. That the temporary restraining order heretofore entered extending the time to gather signatures on nominating petitions from June 30, 1972 to September 1, 1972 is hereby dissolved. All signatures obtained during this period are null and void.

3. That all motions not heretofore acted upon by this Court are hereby denied.

An appropriate order will enter accordingly.

Entered this 15th day of September, 1972, at San Antonio, Texas.

HOMER THORNBERRY, Circuit Judge
D. W. SUTTLE, District Judge
JOHN H. WOOD, JR., District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RAZA UNIDA PARTY, ET AL
v. SA-72-CA-158
BOB BULLOCK, SECRETARY OF STATE OF TEXAS

AMERICAN PARTY OF TEXAS, ET AL
v. MO-72-CA-50
BOB BULLOCK

LAURAL DUNN, ET AL
v. W-72-CA-37
BOB BULLOCK, ET AL

TEXAS NEW PARTY and
SOCIALIST WORKERS PARTY, ET AL
v. CA-72-H-990
PRESTON SMITH, GOVERNOR OF TEXAS and BOB BULLOCK

Judgment

This action came on for hearing before a three-judge Court, Honorable Homer Thornberry, Circuit Judge, and Honorable D. W. Suttle, and Honorable John H. Wood, Jr. presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED, ADJUDGED and DECREED:

1. That articles 1.05, 13.11a, 13.45(2), 13.47a, and 13.50 of the Texas Election Code; the minimum age requirement of Article IV, §§ 4 & 16 of the Texas Constitution, and the McKool-Stroud Primary Financing Law of 1972 are not violative of the First and Fourteenth Amendments to the United

States Constitution. Therefore, all relief requested by plaintiffs is denied and the complaints are dismissed.

2. That the temporary restraining order heretofore entered extending the time to gather signatures on nominating petitions from June 30, 1972 to September 1, 1972 is hereby dissolved. All signatures obtained during this period are null and void.

3. That all motions not heretofore acted upon by this Court are hereby denied.

Entered this 15th day of September, 1972.

HOMER THORNBERRY, Circuit Judge
D. W. SUTTLE, District Judge
JOHN H. WOOD, JR., District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

THE AMERICAN PARTY
OF TEXAS,
et al,
Petitioners,

V.

HONORABLE BOB BULLOCK,
Secretary of State of Texas,
Defendant.

Civil No.
MO-72-CA-50
(Consolidated)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that THE AMERICAN PARTY OF TEXAS, the Plaintiff above named, hereby Appeals to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on September 15, 1972.

This Appeal is taken pursuant to 28 U.S.C. 1253.

GLORIA T. SVANAS
418 West Fourth Street
Odessa, Texas 79761

Attorney for THE AMERIAN PARTY OF TEXAS

Certificate of Service

THIS IS TO CERTIFY that a true and correct copy of the above and foregoing notice of Appeal has this the 16th day of September, 1972, been placed in the United States Mails, Air Mail, postage prepaid and addressed as follows: Mr. Pat Maloney, 1000 Alamo National Building, San Antonio, Texas 78205; Mr. Stuart M. Nelkin, 4635 Southwest Freeway, Suite 720 West, Houston, Texas 77027; Mr. Pat Bailey, Assistant Attorney General, P. O. Box 12548, Capitol Station, Austin,

Texas, 78711; Mr. Edward Mallett, 618 Prairie Street, No. 3, Houston, Texas 77002; Mr. Mario Obledo and Mr. Alfred H. Sigman, 145 Ninth Street, San Francisco, California 94103 and Mr. Laurel N. Dunn, 2811 Old Robinson Road, Waco, Texas 76706.

GLORIA T. SVANAS

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DUNN, ET AL.,
Petitioner

VS. NO. W-72-CA-37

BULLOCK, ET AL.,
Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that LAUREL N. DUNN, the plaintiff above named, hereby Appeals to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on September 15, 1972.

This Appeal is taken pursuant to 28 U.S.C. 1253.

LAUREL N. DUNN
2811 Old Robinson Road
Waco, Texas 67606

Certificate of Service

THIS IS TO CERTIFY that a true and correct copy of the above and foregoing notice of Appeal has this the 27th day of September, 1972, been placed in the United States Mails, Air Mail, postage prepaid and addressed as follows: Mr. Pat Maloney, 1000 Alamo National Building, San Antonio, Texas 78205; Mr. Stuart M. Nelkin, 4635 Southwest Freeway, Suite 720 West, Houston, Texas 77027; Mr. Pat Bailey, Assistant Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711; Mr. Edward Mallet, 618 Prairie Street, No. 3, Houston, Texas 78711; Mr. Edward Mallet, 618 Prairie Street, No. 3, Houston, Texas 77002; Mr. Mario Obledo and Mr. Alfred H. Sigman, 145 Ninth Street, San Francisco, California 94103, and Gloria T. Svanas, 418 West Fourth Street, Odessa, Texas 79761; Office of The Clerk, Supreme Court of the United States, Washington, D.C. 20543.

LAUREL N. DUNN

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON, DIVISION

TEXAS NEW PARTY, TEXAS SOCIALIST WORKERS PARTY, DEBBY LEONARD, MEYER ALEWITZ, KEN GJENMRE, BENTON S. RUSSELL, III, BOBBY CALDWELL, DAVID HALE, RICHARD GARCIA, ELIZABETH COX and JAMES DAMON Individually and on behalf of all other persons similarly situated,

PLAINTIFFS

VS.

PRESTON SMITH, Individually and as Governor of the State of Texas and BOB BULLOCK, Individually and as Secretary of the State of Texas

DEFENDANTS

CIVIL ACTION NO. 72-H-990

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Texas New Party, Texas Socialist Workers Party, Debby Leonard, Meyer Alewitz, Ken Gjenmre, Benton S. Russell, III, Bobby Caldwell, David Hale, Richard Garcia, Elizabeth Cox and James Damon, the Plaintiffs in the above styled and numbered cause, hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on September 15, 1972.

This appeal is taken pursuant to 28 U.S.C. 1253.

MICHAEL ANTHONY MANESS
410 Houston Bar Center Building
723 Main Street
Houston, Texas 77002
Attorney for Plaintiffs

Certificate of Service

THIS IS TO CERTIFY that a true and correct copy of the above and foregoing Notice of Appeal has this the 17th day of October, 1972, been placed in the United States Mails, Air Mail, postage prepaid and addressed as follows: Mr. Pat Maloney, 1000 Alamo National Building, San Antonio, Texas 78205; Mr. Stuart M. Nelkin, 4635 Southwest Freeway, Suite 720 West, Houston, Texas 77027; Mr. Pat Bailey, Assistant Attorney General, P. O. Box 12548, Capitol Station, Austin, Texas 78711; Mr. Mario Obledo and Mr. Alfred H. Sigman, 145 Ninth Street, San Francisco, California 94103; and Mr. Laurel N. Dunn, 2811 Old Robinson Road, Waco, Texas 76706.

MICHAEL ANTHONY MANESS

APPENDIX D

Art .13.12 Application for place on ballot; filing; deadline; extension; withdrawal; notice

The application to have the name of any person affiliating with any party placed on the official ballot for a general primary as a candidate for the nomination of such party for any office for which a nomination may be made at such primary shall be governed by the following.

* * * * * * * *

2. The application shall be filed with the state chairman in the case if statewide offices, with the county chairman of each county which is included wholly or partially within the district in the case of district offices, and with the county chairman of the particular county in the case of county and precinct offices; provided, however, that applications of candidates for justice of the court of civil appeals shall be filed with the state chairman. Except as provided in Paragraph 2a of this section, the application shall be filed not later than 6 p.m. on the first Monday in February preceding such primary.

Subsec. 2 amended by Acts 1967, 60th Leg., p. 1912, ch. 723, § 45, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 30, eff. Sept. 1, 1969.

2a. The filing deadline stated in Paragraph 2 of this section shall be extended for the particular party primary and office involved, as provided in this paragraph: (i) if between the fifth day preceding the first Monday in February and the 30th day preceding the general primary, both dates included, any candidate for an office dies, if the candidate had complied with all prerequisites for having his named placed on the ballot which he was required to perform by the date of his death; (ii) if between the first Monday in February and the 30th day preceding the general primary, both dates included, any candidate who is seeking nomination to an office which he then holds withdraws or is declared ineligible for election to that office; or (iii) if between the first Monday in February and the 30th day preceding the general primary, both dates included, the only candidate who has filed for a particular office in the primary of that party withdraws or is

declared ineligible. In the enumerated circumstances, the name of the deceased, withdrawn, or ineligible candidate shall not be printed on the ballot, and applications for that party's nomination for that office may be filed not later than 6 p.m. on the 15th day following the death, withdrawal, or declaration of ineligibility of the candidate; provided, however, that where the death, withdrawal, or declaration of ineligibility occurs less than 15 days before the 25th day preceding the primary, the deadline for filing shall be 6 p.m. on the 25th day preceding the primary. Notwithstanding the provisions of Paragraph 2b of this section, an application which is not received by the chairman until after 6 p.m. on the 25th day shall not be timely, and applications mailed but not actually received by that time shall not be accepted for filing. Further, notwithstanding the provisions of Section 186[1] or any other provision of this code, the full amount of the asessment or filing fee must be received by the chairman not later than 6 p.m. on the 25th day.

Subsec. 2a added by Acts 1967, 60th Leg., p. 1912, ch. 723, § 45, eff. Aug. 28, 1967. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 30, eff. Sept. 1, 1969.

2b. Except as otherwise provided in Paragraph 2a, an application filed under either Paragraph 2 or Paragraph 2a of this section shall be considered filed if sent to the proper chairman at his post-office address by registered or certified mail from any point in this state not later than the day before the filing deadline, as shown by the postmark. Any application not received the filing deadline, as shown by the postmark. Any application not received by the chairman before the deadline does not comply with this law unless it has been mailed by registered or certified mail as herein provided, and it shall not be sufficient to send the application by any other type of mail unless it is delivered before the deadline.

2c. A candidate may withdraw by filing with the chairman or chairmen with whom his application was filed, a signed request, duly acknowledged by him, that his name not be printed on the primary ballot. Whenever a filing period is extended by the death, withdrawal, or ineligibility of a candidate, each county chairman with whom the candidate's ap-

---

[1] Article 13.08.

plication was filed shall give notice of the opening of the filing and of the deadline to file by mailing or delivering a news release within 48 hours after his first knowledge of the death, withdrawal, or ineligibility, to each newspaper, as defined in Article 28a, Vernon's Texas Civil Statutes, as amended, which is published in the county. Where the application was filed with the state chairman, he shall give notice in like manner by mailing or delivering the release to at least three daily newspapers which maintain news representatives in the State Capitol. The failure of a county chairman or state chairman to comply with this requirement shall be ground for his removal from office by the committee of which he is chairman.

2d. A candidate shall not be permitted to withdraw during the period of 20 days preceding the general primary. If after the 30th day preceding the general primary a candidate dies or an incumbent or an unopposed candidate withdraws or is declared ineligible, the procedure detailed in Section 104 of this code[1] shall be followed. Except as provided in that section, the name of a deceased, withdrawn, or ineligible candidate shall not be printed on the ballot.

Subsecs. 2b-2d added by Acts 1969, 61st Leg., p. 2662, ch. 878, § 30, eff. Sept. 1, 1969.

3. Within ten days after the first Monday in February, the state chairman shall file with the Secretary of State, and each county chairman shall file with the county clerk of his county a list of the names of all candidates, arranged by office for which nomination is sought, whose applications have been timely received. In like manner each chairman shall file, within three days after any extended filing deadline under Paragraph 2a of this section, a supplemental list of candiates whose applications were timely received after the original list was prepared. Each county chairman shall forward to the chairman of the state executive committee a copy of each list which he files with the county clerk.

Subsec. 3 amended by Acts 1967, 60th Leg., p. 1913, ch. 723, § 45, eff. Aug. 28, 1967.

Art. 13.45 Nominations by parties under two hundred thousand votes

---

[1] Article 8.22.

Subdivision 1. Parties receiving more than two percent of vote for governor. Any political party whose nominee for Governor in the last preceding general election received as many as two percent of the total votes cast for Governor and less than two hundred thousand votes, may nominate candidates for the general election by primary elections held in accordance with the rules provided in this code for the primary elections of parties whose candidate for Governor received two hundred thousand or more votes at the last general election; or such party may nominate candidates for the general election by conventions as provided in Sections 224 and 225 of this code.[1]

Subdivision 2. Parties receiving less than two percent of vote for governor. Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election, or any new party, or any previously existing party which did not have a nominee for governor in the last preceding general election, may also nominate candidates by conventions as provided in Sections 224 and 225,[1] but in order to have the names of its nominees printed on the general election ballot there must be filed with the secretary of state, within 20 days after the date for holding the party's state convention, the list of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code,[2] signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election. The ad-

---

[1] Articles 13.47 and 13.48.

[1] Articles 13.47 and 13.48.

[2] Articles 13.45a and 13.47.

dress and registration certificate number of each signer shall be shown on the petition. No person who, during that voting year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition. To each person who signs the petition there shall be administered the following oath, which shall be reduced to writing and attached to the petition: "I know the contents of the foregoing petition, requesting that the names of the nominees of the _____ Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party." The petition may be in multiple parts. One certificate of the officer administering the oath may be so made as to apply to all to whom it was administered. The petition may not be circulated for signatures until after the date set by Section 181 of this code for the general primary election. Any signatures obtained on or before that date are void. Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same voting year is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500.

The chairman of the state executive committee shall be responsible for forwarding the precinct lists and petition to the secretary of state.

At the time the secretary of state makes his certifications to the county clerks as provided in Section 3 of this code,[3] he shall also certify to the county clerks the names of parties subject to this subdivision which have complied with its requirements, and the county clerks shall not place on the ballot the names of any nominees of such a party which have been certified directly to them unless the secretary of state certifies that the party has complied with these requirements."

Amended by Acts 1967, 60th Leg., p. 1921, ch. 723, § 59, eff. Aug. 28, 1967. Subd. 2 amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 35, eff. Sept. 1, 1969.

---

[3] Article 1.03.

Art. 13.47 Conventions of parties not required to hold primary

Political parties which are not required by law to make nominations by primary election may make nominations by conventions as provided herein.

Nominations for statewide offices shall be made at a state convention, which shall be held on the second Saturday in June of the election year, and which shall be compoesd of delegates selected in the various counties at county conventions held on the second Saturday in May. The county conventions shall be composed of delegates from the general election precincts of such counties elected therein at precinct conventions held in such precincts on the first Saturday in May.

Nominations for district offices of districts composed of more than one county or part thereof shall be made at district conventions held on the third Saturday in May of the election year, composed of delegates elected thereto from the counties having territory within the district, at the county conventions held on the second Saturday in May.

Nominations for county and precinct offices and for district offices of districts composed of only one county or part of one county shall be made at the county conventions held on the second Saturday in May.

The state executive committee of each party shall determine the formula by which the number of delegates to the county, district, and state conventions of that party shall be governed, and shall also formulate such rules as it deems desirable with respect to participation of delegates at a county convention in the nomination of candidates for precinct offices and for district offices of districts composed of only a part of the county, and in the election of delegates to a district convention where only a part of the county is included in the district.

Amended by Acts 1967, 60th Leg., p. 1923, ch. 723, § 61, eff. Aug. 28, 1967.

Art. 13.50 Non-partisan and independent candidates

The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer, as herein provided,

and delivered to him within thirty days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one percent of the entire vote of the state cast for Governor at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed five hundred.

No application shall contain the name of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at either the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at either such primary election.

The application shall contain the following information with respect to each person signing it: his address and the number

of his poll tax receipt or exemption certificate and the county of issuance; or if he is exempt from payment of a poll tax and not required to obtain an exemption certificate, the application shall so state.

Any person signing the application of an independent candidate may withdraw and annul his signature by delivering to the candidate and to the officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 227; as amended Acts 1963, 58th Leg., p. 1017, ch. 424, § 104.

Art. 13.08c—1. Primary financing law of 1972

Section 1. *Purpose.* The invalidation by federal court decisions of the statutory method of financing primary elections in this State necessitates legislative action to provide a solution to the impasse facing political parties wihch cast more than 200,000 votes for Governor in the last preceding general election, in that the existing law requires that their nominations for the general election be made in primary elections but they are left without adequate means to finance the primaries. The purpose of this Act is to provide a temporary solution to the impasses by enacting provisions relating to the conduct and financing of primary elections for the year 1972.

Sec. 1-A. *Short Title.* This Act may be cited as the McKool-Stroud Primary Financing Law of 1972.

Sec. 2. *Conduct of the Primary Elections.* Nominations for the general election to be held on November 7, 1972, shall be made in the manner provided in the Texas Election Code. The primary elections held by a political party pursant to Sections 180 and 181, Texas Election Code (Articles 13.02 and 13.03, Vernon's Texas Election Code), shall be conducted through the party's state executive committee and county executive committees in accordance with the procedures detailed in the Election Code, with the following modifications and clarifications:

(1) In order for a candidate to have his name placed on the ballot for the general primary election, he must have either paid a filing fee or filed a nominating petition in compliance with the directives issued by the Secretary of State following the decision in Johnston v. Bullock, et al., CA 3-5373-C, United States District Court for the Northern District of Texas, Dallas Division,[1] which declared the statutory system of fees and assessments to be invalid.

(2) The fees paid to the county chairman pursuant to the directives of the Secretary of State and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary elections shall be deposited to the credit of the primary fund referred to in Section 196 (Article 13.18) of the Election Code and shall be applied to payment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying the costs. The remaining costs incurred after the effective date of this Act shall be borne by the State out of the appropriation made for that purpose in Section 4 of this Act, in accordance with the procedures outlined in Section 3 of this Act, or out of supplemental appropriations made at subsequent sessions of the Legislature if the original appropriation is insufficient.

(3) In each county in which voting machines or an electronic voting system has been adopted, the county Commissioners Court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding $16 per unit for voting machines adopted under Section 79 of the Election Code,[2] and not exceeding $3 per unit for voting equipment adopted under Section 80 of the Election Code.[3] The maximum amount fixed in this Act includes the lease price for use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines

---

[1] See Johnston v. Luna (D.C. 1972) 338 F.Supp. 355.

[2] Article 7.14.

[3] Article 7.15.

or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabultaing equipment at the central counting station, but all actual expenditures incidental to operation of the central counting station in counting the ballots are payable out of the primary fund.

(4) All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where necessary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with the conduct of absentee voting or any other services rendered by the county clerk in the primary elections, except for voting machines and/or punchcard units used in conducting the absentee voting.

(5) The total combined compensation paid to the county chairman and the secretary of the county executive committee (where the committee has named a secretary) and to any office personnel employed to assist in the performance of the duties placed upon the chairman, the secretary, and the members of the county executive committee shall not exceed five percent of the amount actually spent in holding the primary elections for the year, exclusive of the compensation paid to these officers and employees.

(6) Charges for office expenses shall not be allowed for a period extending beyond the 10th day after the date of the last primary held by the party.

(7) The Secretary of State is authorized to promulgate uniform rules in regard to the maximum number of election clerks who may be compensated for their services at a polling place, taking into account the number of registered voters in the election precinct, the number of votes cast in the precinct in the party's primary elections in 1970, the method of voting, and other relevant factors. The Secretary of State must allow compensation for the presiding judge, alternate judge, and at least one clerk for each precinct. If the Secretary of State promulgate rules on this subject, he shall furnish a copy of the rules to each county chairman at least 10 days before the election to which the rules apply. The Secretary of State may allow compensation for clerks employed in excess of the appli-

cable limit set by the rules if he finds that employment of additional clerks was justified by special circumstances existing in the precinct.

(8) The county chairman is not required to file the financial report provided for in Subdivision 5 of Section 196 (Article 13.18) of the Election Code, but he shall account for the primary fund in the manner provided in Section 3 of this Act.

(9) The Secretary of State shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The State Attorney General shall be specifically responsible for the enforcement of this section.

Sec. 3. *State Financing.* (a) As soon as possible after this Act takes effect, the Secretary of State shall obtain from each county chairman of each political party in the state which is holding primary elections in 1972 a sworn itemized estimate of the costs for conducting the first primary election in his county, showing the costs incurred or to be incurred after the effective date, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary election to and including the date of such sworn statement. The Secretary of State shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized expenditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes and court decisions of this State. The Secretary of State shall subtract from the approved estimated any amount of the fees and contributions received by the chairman remaining over and above legitimate expenses incurred, before the effective date of this Act, for the conduct and financing of the Primary Elections for the year 1972, and shall certify to the Comptroller of Public Accounts the net estimated amount which is payable out of State funds, together with the Secretary of State's calculation of three-fourths of that amount. The Comptroller forthwith shall issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the Secretary of State a sworn itemized estimate of the costs of the runoff primary incurred or to be

incurred after the effective date of this Act. As in the case of the first primary, the Secretary of Sttae shall notify the chairman of items which he disallows, and shall certify to the Comptroller the approved estimated amount which is payable out of State funds, together with the Secretary of State's calculation of three-fourths of that amount; and the Comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the Secretary of State a sworn itemized report of the actual costs, filing fees collected and contributions received, of the primary election or elections (as the case may be) held by his party in his county, showing the costs incurred before the effective date of this Act separately from those incurred after the effective date. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the Secretary of State shall allow the increase if good cause is shown. The Secretary of State shall certify to the Comptroller the difference between the total amount payable out of State funds and the amount which has already been transmitted to the chairman, and the Comptroller shall issue a warrant to the chairman in the amount certified. If the total amount of the fees and contributions in excess of those previously expended for expenses which would have been payable if incurred after the effective date of this Act, and the payments from the State exceeds the actual expenditures incurred after the effective date of this Act, the chairman shall refund the difference to the State, in the form of a check made payable to the Secretary of State. The Secretary of State shall deposit the check in the State Treasury to the credit of the appropriation account established under Subsection (a) of Section 4 of this Act.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the State is not

liable to any claimant for failure of the county chairman to pay a claim.

(f) The Secretary of State shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting their statements and reports to him.

(g) Wherever the word "county chairman" is used in this Act, it shall apply to the county chairman or his succesor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(h) In any case in which the Secretary of State disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an increase under Subsection (c) of this section, the county chairman may appeal to a district court of Travis county by filing a petition within 20 days after the date the notifictaion is received from the Secretary of State, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts for payment within 10 days after its submission to the Secretary of State may be considered disallowed for this purpose. Judicial review shall be by trial de novo as are appeals from the justice court to the county court.

Sec. 4. *Appropriations.* (a) There is appropriated from the general revenue fund to the office of the Secretary of State the sum of $2,150,000 for the purpose of making payments to county chairmen as provided in Sections 2 and 3 of this Act. All refunds deposited to the credit of this appropriation account are appropriated for the same purpose as designated for the original appropriation.

(b) To enable the Secretary of State to finance the additional duties which this Act places upon him, there is appropriated from the general revenue fund to the office of the Secretary of State the sum of $20,000, which shall be placed to the credit of the appropriation accounts established under Items 6 and 8 of the appropriation made by Chapter 1047, Acts of the 62nd Legislature, Regular Session, 1971, to the office of the Secretary of State for the fiscal year ending August 31, 1972, in the following amounts:

Item 6 (seasonal and part-time help)	$ 6,000
Item 8 (consumable supplies and materials, current and recurring operating expense, etc.)	14,000

Sec. 4-A. *Severability.* If any provision of this Act or the applicable thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Acts 1972, 62nd Leg., 2nd C.S., p. ___, ch. 2, §§ 1 to 4-A, eff. April 4, 1972.